



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

CARLTON COLEMAN, #44795,	§	
Petitioner,	§	
	§	
vs.	§	CIVIL ACTION NO. 4:04-2217-26BH
	§	
JOHN J. LAMANNA, Warden, et al.,	§	
Respondents.	§	
	§	
	§	

ORDER RECOMMITTING THE MATTER TO THE MAGISTRATE JUDGE

This is a petition for writ of *habeas corpus*. Petitioner is proceeding *pro se*. The matter is before the Court for review of the report and recommendation (report) of the United States Magistrate Judge in which he suggests that the petition be dismissed for Petitioner's failure to properly file his response to Respondents' motion to dismiss. The report is made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *See Matthews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the report to which specific objection is made and the Court may accept, reject, or modify, in whole or in

part, the recommendation of the Magistrate Judge or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

On August 31, 2004, Respondent filed a motion to dismiss. Thereafter, on September 3, 2004, the Magistrate Judge filed an order pursuant to *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 1975), in which he provided an explanation of the procedures Petitioner should follow in response to the motion to dismiss and the possible consequences if he failed to respond adequately. The order directed Petitioner to file a response to the motion within thirty-four days. Petitioner failed to do so.

On October 14, 2004, the Magistrate Judge filed his report, recommending that Petitioner's case be dismissed for failure to prosecute. Thereafter, on October 21, 2004, Petitioner filed a response to the motion to dismiss.

Although Petitioner's response was not timely filed, out of an abundance of caution, and in the interests of justice, the Court will recommit the matter to the Magistrate Judge for consideration of Petitioner's response.

IT IS SO ORDERED.

Signed this 21st day of April, 2005, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE